

**ASSEMBLY BILL**

**No. 2006**

**Introduced by Assembly Member Nunez**

February 13, 2004

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An act to add Article 17 (commencing with Section 400) to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 2006, as introduced, Nunez. Electrical restructuring: Reliable Electric Service Act of 2004.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, and authorizes the commission to fix just and reasonable rates and charges. Under existing law, a public utility has a duty to serve, including furnishing and maintaining adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons and the public. The existing Public Utilities Act requires the commission, pursuant to electrical restructuring, to authorize direct transactions between electricity suppliers and retail end-use customers. However, other existing law suspends the right of retail end-use customers to acquire service from certain electricity suppliers after a period of time to be determined by the commission, until the Department of Water Resources no longer supplies electricity under that law.

This bill would establish a core and noncore model under which the utility's duty to serve would extend to core customers and those noncore customers that elect to receive bundled electric service from the electrical corporation. The utility's duty to serve noncore customers

that elect to purchase electricity through a direct transaction would exist for transmission and distribution electric service. The bill would require electrical corporations to file, and for the commission to approve, an integrated resource investment plan, as specified, sufficient to fulfill the utility's duty to serve. The bill would provide for the recovery of costs and investments made pursuant to an approved integrated resource investment plan. The bill would require that a utility's bundled service customers be indifferent to the election by noncore customers to purchase electricity through direct transactions. The bill would require the commission, in consultation with the Independent System Operator, to establish resource adequacy requirements to ensure adequate reserves of physical generating capacity are available to reliably serve all customers and would require the Independent System Operator, consistent with federal law, to implement and enforce these resource adequacy and reserve requirements in a nondiscriminatory manner on all load serving entities. The bill would require the commission to adopt implementing rules and regulations.

A violation of the Public Utilities Act or an order of the commission is a crime under existing law.

Because a violation of the bill's provisions would be a violation of the act, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) An adequate and reliable supply of electricity is essential to
- 4 the health, safety, and welfare of all California consumers.
- 5 (b) Safe, reliable, and affordable, electric service that is
- 6 environmentally sustainable, is of utmost importance to the
- 7 consumers of this state and its economy.



1 (c) Electrical corporations have an obligation to serve their  
2 customers with reliable electric service at just and reasonable rates.

3 (d) In order to provide safe, reliable, and affordable electric  
4 service to consumers, electrical corporations must invest in needed  
5 resources, including utility-owned and procured generation, new  
6 and repowered generation, high-efficiency cogeneration,  
7 renewable generation, transmission, distribution, and energy  
8 efficiency and other demand reduction measures, in a manner that  
9 produces the best value for ratepayers.

10 (e) In order to ensure that investments in resources are made in  
11 a manner that produces the best value for ratepayers, electrical  
12 corporations should prepare an integrated resource investment  
13 plan for commission review and approval, that achieves a  
14 diversified, reliable, and environmentally sustainable portfolio of  
15 efficient, cost-effective supply and demand resources.

16 (f) In order to ensure that an integrated resource investment  
17 plan will result in investments in resources sufficient to provide  
18 reliable electric service to customers of an electrical corporation  
19 without stranding costs or shifting costs, a stable and predictable  
20 customer base is necessary and essential.

21 (g) In order to attract sufficient capital to make investments in  
22 needed resources, there must be assurance that reasonable costs  
23 and investments, including a return of and on direct investments,  
24 and investments made by third parties under contract with an  
25 electrical corporation, are recovered in rates.

26 (h) California consumers will not receive reliable and  
27 affordable electric service, nor will consumers avoid repetition of  
28 past problems with volatile wholesale electricity prices, rolling  
29 blackouts, and long-term supply contracts that threaten consumers  
30 with billions of dollars in above-market electricity costs, unless a  
31 durable framework is enacted to support investment in needed  
32 resources, as soon as possible.

33 SEC. 2. Article 17 (commencing with Section 400) is added  
34 to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code,  
35 to read:

36  
37 Article 17. Reliable Electric Service Act of 2004  
38

39 400. This article shall be known, and may be cited, as the  
40 Reliable Electric Service Act of 2004.

1 400.1. (a) An electrical corporation has an obligation to serve  
2 the utility's bundled customers with reliable electric service at just  
3 and reasonable rates, pursuant to Section 451. For purposes of this  
4 article, the utility's "bundled customers" means core customers  
5 and those noncore customers that commit to bundled service  
6 pursuant to this article.

7 (b) The obligation to serve the utility's bundled customers  
8 includes the obligation to plan for, invest in, and provide adequate,  
9 efficient, and environmentally sustainable resources, including  
10 utility-owned and procured generation resources, new and  
11 repowered generation resources, high-efficiency cogeneration,  
12 renewable generation resources, transmission and distribution  
13 resources, energy efficiency and demand response resources, and  
14 to employ an adequately sized, well trained utility workforce to  
15 provide these resources.

16 (c) An electrical corporation has an obligation to serve noncore  
17 customers that elect to enter into direct transactions, with electric  
18 transmission and distribution service at just and reasonable rates,  
19 pursuant to Section 451. No costs incurred by the electrical  
20 corporation to serve noncore customers with electric transmission  
21 and distribution service, shall be shifted to the utility's bundled  
22 customers.

23 400.5. (a) To ensure that adequate investments are made in  
24 resources necessary to provide consumers with reliable electric  
25 service, the commission shall authorize an electrical corporation  
26 to make investments in efficient, cost-effective resources,  
27 including utility-owned and procured generation resources, new  
28 and repowered generation resources, high-efficiency  
29 cogeneration, renewable generation resources, transmission  
30 resources, and cost-effective energy efficiency and demand  
31 response resources, consistent with the electrical corporation's  
32 approved integrated resource investment plan.

33 (b) The commission shall, after public hearing, approve and  
34 thereafter maintain just and reasonable rates sufficient to ensure  
35 that reasonable investments in the resources necessary to provide  
36 consumers with reliable electric service, including a reasonable  
37 return of and on investment, are fully recovered over the life of the  
38 resource, and that costs reasonably incurred to operate and  
39 maintain those resources are fully recovered on a timely basis.



(c) The cost recovery assurance for investments in resources applies to both of the following:

(1) Direct investments made by an electrical corporation.

(2) The electrical corporation's full costs of contracting with another entity, including the cost of any collateral requirements and debt equivalence.

400.10. (a) To ensure that adequate investments necessary to meet the electrical corporation's obligation to serve bundled customers are made, each electrical corporation shall, no later than July 1, 2005, and at least every three years thereafter, prepare an integrated resource investment plan to achieve a diversified, environmentally sustainable portfolio of efficient cost-effective supply and demand resources to serve the utility's bundled customers. The integrated resource investment plan shall include demand and supply forecasts for 5-, 10-, and 15-year periods, and shall ensure that adequate resources are available to reliably serve the utility's bundled customers. The process for utility selection and commission approval of these resources shall be designed to achieve best value for the utility's bundled customers, by considering reliability, efficiency, cost-effectiveness, system impacts, resource diversity, and risk. The commission shall review and approve, with such revisions as the commission deems necessary to implement the provisions of this article, an electrical corporation's integrated resource investment plan within 120 days of receipt.

(b) The integrated resource investment plan shall provide for investments in all practicable and cost-effective energy efficiency and demand response resources, including load management, that offer equivalent or better system reliability, equivalent or better environmental improvements, and equivalent or lower costs to ratepayers than supply alternatives.

(c) The integrated resource investment plan shall provide for investments in renewable generation consistent with Article 16 (commencing with Section 399.11), provided that investments in renewable generation are made in furtherance of the goal of supplying 20 percent of an electrical corporation's retail sales from eligible renewable energy resources, no later than December 31, 2010.

(d) (1) The integrated resource investment plan shall provide for investments, including extensions, renewals, or renegotiations

1 of existing contracts, in new or repowered generation and  
2 high-efficiency cogeneration projects. These resources may be  
3 obtained through investment by independent generators under  
4 contract with the electrical corporation, through a competitive  
5 procurement process or other process approved by the  
6 commission, consistent with Section 454.5, or from direct utility  
7 investment. To the maximum extent permissible under law,  
8 repowering and high-efficiency cogeneration projects that offer  
9 equivalent or better system reliability, equivalent or better  
10 environmental benefits, and equivalent or lower costs to  
11 ratepayers than new generation, shall be given first consideration.

12 (2) For purposes of this chapter, “high-efficiency cogeneration  
13 projects” means a cogeneration project that can achieve thermal  
14 efficiencies greater than 75 percent and are used to meet the  
15 thermal requirements of continuous industrial or commercial  
16 processes.

17 (3) For purposes of this chapter, “repowered generation”  
18 means a project for the modification of an existing generation unit  
19 of a thermal powerplant that meets all of the following criteria:

20 (A) The project complies with all applicable requirements of  
21 federal, state, and local laws.

22 (B) The project is located on the site of, and within the existing  
23 boundaries of, an existing thermal facility.

24 (C) The project will not require significant additional  
25 rights-of-way for electrical or fuel-related transmission facilities.

26 (D) The project will result in significant and substantial  
27 increases in the efficiency of the production of electricity,  
28 including, but not limited to, reducing the heat rate, reducing the  
29 use of natural gas, reducing the use and discharge of water, and  
30 reducing air pollutants emitted by the project, as measured on a per  
31 kilowatthour basis.

32 (e) The integrated resource investment plan shall provide for  
33 investments in new or expanded transmission facilities and control  
34 systems that are needed to ensure efficient use and reliable  
35 operation of the electric grid for core and noncore customers, to  
36 facilitate the development of new, repowered, or renewable  
37 generation facilities, or to accommodate load growth. With respect  
38 to any new or expanded electrical transmission facility for which  
39 the Independent System Operator has made a determination that  
40 the project is needed to meet applicable reliability standards or to



1 promote economic efficiency, that determination shall be  
2 conclusive for purposes of determining whether to issue a  
3 certificate of public convenience and necessity pursuant to  
4 Chapter 5 (commencing with Section 1001), and shall be included  
5 in the approved integrated resource investment plan.

6 (f) (1) The integrated resource investment plan may provide  
7 for investments in distributed generation to improve system  
8 reliability, thereby deferring or eliminating investments in  
9 distribution facilities that are otherwise needed to improve system  
10 reliability, by either direct investment by the electrical corporation  
11 or under contract with a third party, provided the electrical  
12 corporation finds that the investment in distributed generation  
13 would accomplish each of the following:

14 (A) Result in overall cost savings due to deferral or elimination  
15 of electric distribution projects.

16 (B) Provide the required reliability and operational  
17 characteristics to support adequate service reliability to customers  
18 in the affected area.

19 (2) In cases where the distributed generation is provided under  
20 contract with a third party to reduce distribution system loads, the  
21 third party must maintain physical assurance that the contracted  
22 load reduction will be available during all required time periods.

23 (g) The integrated resource investment plan shall provide for  
24 the continuation of the self-generation incentive program  
25 authorized pursuant to Section 379.5 for ultraclean distributed  
26 generation, as defined in Section 353.2.

27 (h) The integrated resource investment plan shall provide that  
28 an electrical corporation shall meet the resource adequacy  
29 requirements, owning or procuring sufficient electric generating  
30 capacity to meet 100 percent of annual peak demand, plus requisite  
31 operating and planning reserve margins as determined by the  
32 commission, for the electric load served by the electrical  
33 corporation.

34 400.20. (a) The Legislature finds and declares all of the  
35 following:

36 (1) To ensure that an electrical corporation can properly plan  
37 for and invest in resources to reliably serve its customers without  
38 stranding costs or shifting costs among customers, a stable and  
39 predictable customer base is necessary and essential.



(2) A core and noncore electric service model, under which an electrical corporation is required to provide bundled electric service to all core customers on a cost-of-service basis, while noncore customers with a maximum peak demand of at least 500 kilowatts, can elect to enter into a direct transaction to purchase electricity from a nonutility electric service provider, will, if properly structured, provide this stability.

(3) Under a properly structured core and noncore electric service model, a utility's bundled service customers are indifferent to whether or not a noncore customer elects to purchase electricity from an electrical corporation or through a direct transaction.

(4) To ensure indifference, the commission is required to prevent any shifting of costs to a utility's customers receiving bundled service, from noncore customers that elect to purchase electricity through direct transactions.

(5) It is in the public interest to allow noncore customers that elect to purchase electricity through direct transactions, a safe harbor of limited duration during which they can receive electricity from an electrical corporation, provided the utility's bundled service customers are indifferent to whether a noncore customer purchases electricity from an electrical corporation during the safe harbor period. To ensure indifference, a noncore customer should pay the higher of the incremental costs of additional short-term spot electricity procured or generated to serve them or the otherwise applicable tariff rate.

400.21. On or before December 31, 2005, the commission shall adopt rules and regulations to implement a core and noncore model that accomplish all of the following:

(a) An electrical corporation shall remain obligated to provide reliable bundled electric service to core customers that have a maximum peak demand of less than 500 kilowatts on a cost-of-service basis.

(b) Noncore customers with a maximum peak demand of at least 500 kilowatts may elect to enter into a direct transaction with a nonutility electric service provider. The electric service provider shall be fully responsible for the resource adequacy requirements of the electricity load of the customers it serves, and the integrated resource investment plan of the electrical corporation shall exclude the resource adequacy requirements of the electricity load serviced by an electric service provider.



1 (c) A noncore customer that elect to take bundled service from  
2 the electrical corporation shall be subject to a five-year rolling  
3 commitment to the electrical corporation.

4 (d) A noncore customer that elects to purchase electricity  
5 through a direct transaction may thereafter receive default electric  
6 commodity service from the electrical corporation under terms  
7 established by the commission to ensure that the utility's bundled  
8 service customers are indifferent to whether the noncore customer  
9 purchases electricity from the electrical corporation during this  
10 safe harbor period. To ensure indifference, a noncore customer  
11 shall pay the higher of the incremental costs of additional  
12 short-term spot electricity procured or generated to serve the  
13 noncore customer or the otherwise applicable tariff rate.

14 (e) To ensure indifference, the commission shall adopt rules  
15 sufficient to avoid a shifting of costs to the utility's bundled  
16 customers that would result from noncore customers electing to  
17 purchase electricity through direct transactions. Noncore  
18 customers shall continue to pay those costs recoverable pursuant  
19 to subdivisions (d), (e), (f), and (g) of Section 366.2.

20 (f) The commission shall adopt rules that defer new elections  
21 to enter into direct transactions for the purchase of electricity by  
22 noncore customers until the commission has approved a cost  
23 recovery mechanism that ensures that new elections by noncore  
24 customers to purchase electricity through direct transactions will  
25 not result in the under recovery of any costs attributable to those  
26 noncore customers.

27 (g) Customers that are purchasing electricity pursuant to a  
28 direct transaction as of January 1, 2005, including customers that  
29 qualify as core customers, pursuant to rules adopted by the  
30 commission, may choose to continue to purchase electricity  
31 pursuant to direct transaction or to return to bundled service  
32 provided by the electrical corporation.

33 (h) In designating the earliest possible date for implementation  
34 of a community choice aggregation program, the commission  
35 shall ensure that there will be no cost-shifting or stranding of  
36 investments made pursuant to an integrated resource investment  
37 plan of the electrical corporation that has been approved by the  
38 commission.

39 400.22. (a) All electrical load serving entities, including  
40 nonutility electric service providers and community choice

1 aggregators, shall be subject to the same requirements for resource  
2 adequacy, resource diversity, the renewable portfolio standard,  
3 and demand response resources applicable to electrical  
4 corporations.

5 (b) The commission, in consultation with the Independent  
6 System Operator, shall establish resource adequacy requirements  
7 to ensure adequate reserves of physical generating capacity are  
8 available to serve all customers reliably. Consistent with federal  
9 law, the Independent System Operator shall implement and  
10 enforce these resource adequacy and reserve requirements in a  
11 nondiscriminatory manner on all load serving entities.

12 400.30. To ensure that the utility's obligation to serve bundled  
13 customers with reliable electric service at just and reasonable rates  
14 is met by an electrical corporation, the commission shall adopt  
15 rules and regulations consistent with the policies and provisions of  
16 this article. Subject to judicial review as provided in this act, those  
17 actions undertaken by the commission pursuant to the provisions  
18 of this article are binding upon the commission, and modify,  
19 amend and supercede any other provisions of law, including  
20 Section 1708.

21 400.40. Nothing in this chapter shall alter or affect any  
22 outcome of a competitive procurement process conducted by an  
23 electrical corporation pursuant to any other law, including Section  
24 454.5, prior to January 1, 2005.

25 SEC. 3. No reimbursement is required by this act pursuant to  
26 Section 6 of Article XIII B of the California Constitution because  
27 the only costs that may be incurred by a local agency or school  
28 district will be incurred because this act creates a new crime or  
29 infraction, eliminates a crime or infraction, or changes the penalty  
30 for a crime or infraction, within the meaning of Section 17556 of  
31 the Government Code, or changes the definition of a crime within  
32 the meaning of Section 6 of Article XIII B of the California  
33 Constitution.

